

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

CLIFFORD EUGENE OSBORN,

Petitioner,

v.

RICK THALER,  
Director, Texas Dep't of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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2:09-CV-235

**ORDER OVERRULING OBJECTIONS,  
ADOPTING REPORT AND RECOMMENDATION  
and DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner has filed with this Court an application for a writ of habeas corpus by a person in state custody. On November 12, 2009, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that petitioner's habeas petition be dismissed as time barred. On November 25, 2009, petitioner filed objections to the Report and Recommendation.

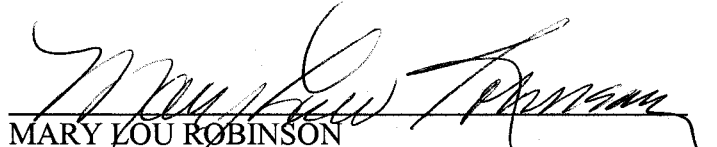
The undersigned United States District Judge has made an independent examination of the record in this case and has considered the objections made by petitioner to the Report and Recommendation. Petitioner contends the Court should base its determination on whether the petition is timely filed by using the day mandate issued from the state appellate court. He further contends, for the first time, he is entitled to equitable tolling because he could not file a state application for habeas corpus relief until after the state appellate court issued its mandate.

While petitioner's objections appear accurately set out state law, the Fifth Circuit has explicitly determined state law is not binding on federal courts and has established that the day on which a state appellate court issues the mandate has no impact on time computation under Title 28 U.S.C. Section 2244(d)(1). *See Roberts v. Cockrell*, 319 F.3d 690, 693, 695 (5th Cir. 2003). Thus, the objections

filed by petitioner are without merit and are hereby OVERRULED. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the petition for a writ of habeas corpus filed by petitioner is DISMISSED.

IT IS SO ORDERED.

ENTERED this 2<sup>nd</sup> day of December 2009.

  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE